

LAW OFFICES LOPEZ & ASSOCIATES
ANTHONY R. LOPEZ, CASBN 149653
9025 Wilshire Blvd., Suite 500
Beverly Hills, California 90211
Telephone: (310)276-4700
Facsimile:(310)861-0509
alopez@musicatty.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

YELLOWCAKE, INC., A
CALIFORNIA CORPORATION,

PLAINTIFF,

v.

HYPHY MUSIC, INC.,

DEFENDANT.

CASE NO.: 1:20-CV-00988-DAD-BAM

COUNTERCLAIM

HYPHY MUSIC, INC.,

COUNTERCLAIMANT

v.

YELLOWCAKE, INC.; COLONIZE
MEDIA, INC.; JOSE DAVID
HERNANDEZ; JESUS CHAVEZ
SR.

COUNTERDEFENDANTS

ANSWER TO PLAINTIFF YELLOWCAKE, INC.'S COMPLAINT

ANSWER

1 Defendant Hyphy Music, Inc. answers the Complaint of Plaintiff Yellowcake, Inc.
2 as follows:

3 1. Answering Paragraph 1, this answering defendant denies that it
4 engaged in direct and contributory infringement, or acted willfully, and further
5 denies that Plaintiff has lawful copyrights in the sound recordings defined as
6 “Yellowcake’s Copyrighted Work.

7 2. Answering Paragraph 2, this answering defendant denies that
8 Yellowcake holds any lawful or valid copyrights in the Copyrighted Works.
9 Answering Defendant further denies that its exploitation of any Los Originales
10 sound recordings, copyrights, masters or cover art in unauthorized, unlawful, or
11 wrongful.

12 3. Answering Paragraph 3, answering defendant denies that Plaintiff is
13 entitled to monetary or injunctive relief and further denies that defendant has
14 engaged in any copyright infringement.

15 4. Answering Paragraph 4, this answering defendant admits that this
16 Court has subject matter jurisdiction.

17 5. Answering Paragraph 5, this answering defendant admits that this
18 Court has supplemental jurisdiction over common law and state law claims.

19 6. Answering Paragraph 6, this answering defendant admits that this
20 Court has personal jurisdiction over it.

21 7. Answering Paragraph 7, this answering defendant admits that Plaintiff
22 is headquartered in the County of Stanislaus.

23 8. Answering Paragraph 8, this answering defendant admits the
24 allegations thereof.

25 9. Answering Paragraph 9, this answering defendant admits the
26 allegations thereof.

27 10. Answering Paragraph 10, this answering defendant denies the
28 allegations thereof based upon a lack of information and belief.

ANSWER

1 11. Answering Paragraph 11, this answering defendant denies the
2 allegations contained therein.

3 12. Answering Paragraph 12, this answering defendant denies that
4 Yellowcake has complied in all respects with the provisions of the copyright acts.
5 Also, if, in fact, Yellowcake has obtained Certificates of Registrations in the works
6 described therein, said registrations were obtained unlawfully and said registrations
7 are invalid.

8 13. Answering Paragraph 13, this answering defendant deny that the
9 copyright registrations information in the described works are valid or lawful, and
10 further denies that Plaintiff has any ownership interest in the described works.

11 14. Answering Paragraph 14, this answering defendant denies the allegations
12 based upon a lack of information and belief. Denial is also based on the fact that
13 even if certain works are published with a copyright notice, any purported
14 copyrights held by Plaintiff are unlawful and invalid.

15 15. Answering Paragraph 15, this answering defendant denies the allegations
16 thereof.

17 16. Answering Paragraph 16, this answering defendant denies the allegations
18 thereof.

19 17. Answering Paragraph 17, this answering defendant denies the allegations
20 thereof.

21 18. Answering Paragraph 18, this answering defendant admits that it
22 received such notice but denied that it engaged in any wrongful or unauthorized
23 exploitation of any Los Originales sound recordings, copyrights, masters or cover
24 art.

25 19. Answering Paragraph 19, this answering defendant denies the allegations
26 thereof.

27 20. Answering Paragraph 20, this paragraph requires no response and each
28 of its responses to the preceding paragraphs are incorporated herein.

ANSWER

1 21. Answering Paragraph 21, this answering defendant admits that this
2 claim for relief arises under 17 U.S.C. § 501.

3 22. Answering Paragraph 22, this answering defendant denies the
4 allegations thereof, and further denies that any registrations in the name of Plaintiff
5 are lawful or valid.

6 23. Answering Paragraph 23, this answering defendant denies the
7 allegations thereof.

8 24. Answering Paragraph 24, this answering defendant denies the
9 allegations thereof.

10 25. Answering Paragraph 25, this answering defendant denies the
11 allegations thereof.

12 26. Answering Paragraph 26, this answering defendant denies the
13 allegations thereof.

14 27. Answering Paragraph 27, this answering defendant admits that
15 Yellowcake has never granted it any rights or authorization, but denies that
16 Yellowcake has lawful ownership and/or rights in the works which Yellowcake has
17 wrongfully labeled “Yellowcake’s Copyrighted Works”.

18 28. Answering Paragraph 28, this answering defendant denies the
19 allegations thereof.

20 29. Answering Paragraph 29, this answering defendant denies the
21 allegations thereof.

22 30. Answering Paragraph 30, this answering defendant denies the
23 allegations thereof.

24 31. Answering Paragraph 31, this answering defendant denies the
25 allegations thereof. It further denies that Yellowcake is entitled to injunctive relief.

26 32. Answering Paragraph 32, this answering defendant denies the
27 allegations thereof. It further denies that Yellowcake is entitled to damages
28

1 33. Answering Paragraph 33, this answering defendant denies the
2 allegations thereof. It further denies that Yellowcake is entitled to attorneys fees
3 and costs.

4 34. Answering Paragraph 34, this answering defendant denies the
5 allegations thereof. It further denies that Yellowcake is entitled to damages.

6 35. Answering Paragraph 35, this paragraph requires no response and
7 each of its responses to the preceding paragraphs are incorporated herein.

8 36. Answering Paragraph 36, this answering defendant denies the
9 allegations thereof.

10 37. Answering Paragraph 37, this answering defendant denies the
11 allegations thereof.

12 38. Answering Paragraph 38, this answering defendant denies the
13 allegations thereof. It further denies that Yellowcake is entitled to injunctive relief.

14 **FIRST AFFIRMATIVE DEFENSE**

15 **(Failure to State a Claim)**

16 39. Plaintiff's Complaint, and each and every claim contained therein,
17 fails to state any claims upon which relief may be granted.

18 **SECOND AFFIRMATIVE DEFENSE**

19 **(Statute of Limitations)**

20 40. Defendant is informed and believes and, based upon such information
21 and belief, alleges that this action is barred by, inter alia, Sections 337, 338, 339,
22 340, and 343 of the Code of Civil Procedure, and 17 U.S.C. §)507.

23 **THIRD AFFIRMATIVE DEFENSE**

24 **(Laches)**

25 41. Defendant is informed and believes and, based upon such information
26 and belief, alleges that Plaintiff has delayed an unreasonable period of time in
27 bringing this action which delay has substantially prejudiced Defendant.
28 Consequently, the present action, and each and every claim therein, is barred by
the Doctrine of Laches.

ANSWER

FOURTH AFFIRMATIVE DEFENSE

(Unclean Hands)

42. Defendant is informed and believes and, based upon such information and belief, alleges that Plaintiff has engaged in certain conduct, as a result of which this action, and each and every claim therein, is barred by the Doctrine of Unclean Hands.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

43. Defendant is informed and believes and, based upon such information and belief, alleges that Plaintiff has failed to make reasonable efforts to mitigate his damages, if any, in whole or in part.

SIXTH AFFIRMATIVE DEFENSE

(Non-Joinder)

44. Defendant is informed and believes and, based upon such information and belief, alleges that Plaintiff is not entitled to judgment herein because Plaintiff has failed to join all necessary or indispensable parties to the litigation.

SEVENTH AFFIRMATIVE DEFENSE

(Equitable Estoppel)

45. Defendant is informed and believes and, based upon such information and belief, alleges that Plaintiff is equitably estopped from bringing the claims enumerated in the Complaint.

EIGHTH AFFIRMATIVE DEFENSE

(Standing)

46. Defendant is informed and believes and, based upon such information and belief, alleges that Plaintiff lacks standing to bring any of the causes of action asserted in the Complaint.

NINTH AFFIRMATIVE DEFENSE

(Failure to Timely Register for Copyright Protection)

47. Defendant is informed and believes and, based upon such information and belief, alleges that Plaintiff is barred from seeking attorneys' fees or statutory fees because Plaintiff failed to timely register the work at issue under 17 U.S.C. §§ 411 and 412.

TENTH AFFIRMATIVE DEFENSE

(No Willful Infringement)

48. Defendant was not aware and had no reason to believe that his acts constituted an infringement of copyright.

ELEVENTH AFFIRMATIVE DEFENSE

(License or Consent)

49. If it is determined that Defendant does not the own the copyrights in the alleged infringed sound recordings, which Defendant affirmatively denies, Defendant use at minimum Defendant is authorized pursuant to a verbal license.

TWELFTH AFFIRMATIVE DEFENSE

(Invalidity or Unenforceability of Copyright)

50. Defendant is informed and believes and based upon such information and belief, alleges that Plaintiff's copyrights are invalid and/or unenforceable.

THIRETEENTH AFFIRMATIVE DEFENSE

(Damages)

51. Defendant denies that Plaintiff was damaged, but if any damages were sustained, those are proximately caused and contributed to by Plaintiff, and/or by persons and entities other than Defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

(Offset)

52. Defendant denies that Plaintiff was damaged, or that it is responsible for any damages, but if any damages were sustained by Plaintiff, those must be

ANSWER

offset by damages sustained by Defendant/Counterclaimant and/or monies due to Defendant/ Counterclaimant.

FIFTEENTH AFFIRMATIVE DEFENSE
(Reservation of Defenses)

53. Due to lack of information as to the matters set forth in the Complaint, Defendant has insufficient knowledge or information on which to form a belief as to whether additional, yet unstated, affirmative defenses are available. Defendant therefore reserves the right to assert such additional defenses in the event that discovery indicates that such additional defenses are proper.

WHEREFORE, Defendant prays for judgment against Plaintiff as follows:

1. That Plaintiff take nothing by its Complaint herein;
2. For costs of suit incurred herein; and
3. For such other and further relief as the Court may deem just and proper.

Dated: August 19, 2020

LAW OFFICES LOPEZ & ASSOCIATES

By: /s/ Anthony R. Lopez
Anthony R. Lopez, Attorney for
Defendant

DEMAND FOR JURY TRIAL

Counterclaimant hereby demands a trial by jury.

Dated: August 10, 2020

LAW OFFICES LOPEZ & ASSOCIATES

Anthony R. Lopez

Anthony R. Lopez, Esq.
Attorneys for the Defendant

ANSWER

- 9 -

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 19,2020, I electronically filed the foregoing with the document with the Clerk of the Court using the CM/ECF filing system. I also certify that the foregoing document is being served this date on all counsel of record or pro se parties as follows:

THOMAS P. GRIFFIN, JR. Esq.
HEFNER, STARK & MAROIS, LLP
2150 RIVER PLAZA DRIVE, SUITE 450
SACRAMENTO, CA 95833

SETH L. BERMAN, sq.
ABRAMS, FENSTERMAN, FERNSTERMAN,
EISMAN, FORMATO, FERRARA, WOLF &
CARONE, LLP

In the manner specified, either via transmission of Notices of Electronic Filing generated by the CM/ECF system or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Anthony R. Lopez
Anthony R. Lopez

ANSWER